Exorcising the Ghost of Pinochet

Jan Knippers Black

The detention of General Augusto Pinochet in London in 1998 on an extradition petition from a Spanish Court opened a new phase in Chile’s transition to democracy as well as a new phase in the evolution of international human rights law. Though the case never came to trial, the media attention that accompanied it and the decisions taken with respect to liability and jurisdictional issues have already had a major impact. Despite the ultimate decision of the Chilean Supreme Court that Pinochet was not liable to prosecution due to mental incapacitation, it appears that decisions taken in Europe forced Chilean media and academia to deal with the crimes of his regime; freed former victims to come forward with cases previously unreported; and caused judges, politicians, and active duty military officers finally to distance themselves from ‘El Jefe’. The indictment of Pinochet forced Chileans still in denial to acknowledge the abuses of the regime, and began to liberate from their own social isolation and self-doubt those who had suffered so much for being right.

The delegitimation of denial

The crimes of Pinochet’s 17-year militocracy were not exactly a secret, certainly not to the hundreds of thousands who were directly or indirectly victimized. But there is a major difference between truth, even widely shared and acknowledged truth, and Official Truth. Only Official Truth can be used in defence of the weak against the powerful, and only Official Truth can become a part of Official History. Thus, the most important outcome of this process of judicial teasing and miscarriage is that it has denied to society in general the moral and psychological defence of denial.

President of the Chilean Senate Andres Zaldívar commented that actions taken in London had finally made it necessary for the Chilean people to deal with their history.1 Even those who for reasons of vulnerability or invulnerability had insisted on disbelieving the pervasive accounts of atrocities now had to acknowledge that atrocities did indeed take place.2 In fact, the abuses of the Pinochet years were addressed officially early on in the process of democratic transition. A Truth and Reconciliation Commission, better known as the Rettig Commission, appointed by the elected Concertación Government of Patricio Aylwin, published a report in 1991 addressing crimes committed between 1973 and 1990. Its effects were muted, however, because it investigated only accusations brought before it and reported out only cases, including some 3,000 deaths, that were well documented and in which evidence was clear. Its primary objective was to bring a sense of closure to survivors by documenting the fates of the disappeared. The identities of perpetrators of the crimes were not revealed, and amnesty was offered to those who con-
fessed and assisted in the investigations.

A less formal process has carried forward the work begun by the Rettig Commission. Known as the Mesa de Diálogo (Dialogue Roundtable), it has brought representatives of the military and police, the government and the Catholic Church together with lawyers representing those abused by the Pinochet regime. According to a former staff member of the Chilean Human Rights Commission, this process has been highly frustrating to the defenders of the abused. It has had the peculiar consequence at times of drawing testimony in which details of confessions are contradicted by more convincing evidence. Apparently some abusers who have confused or forgotten details have simply wanted to grab the offer of amnesty and anonymity while they could.3

One of the reasons why this sordid history had not been previously dealt with more straightforwardly is that many civilians were less than confident that it was indeed ‘history’. There was an undercurrent of fear that a military organization still shielded from civilian interference might resist the exposure of their deeds by violent means. More important, however, was the fact that the surviving power structure was a legacy of a thoroughgoing counter-revolution. It was not simply the leadership of the military and the police that remained intact. To a large extent, leaders in business and industry, in the professions, in political parties, in the courts, in the universities, in the media, even in the Church, were beneficiaries, directly or indirectly, of the long dictatorship. Full exposure was not in their interest.

The social legacy of Pinochetismo

Situated through no fault of its own in a hemisphere claimed by the United States, Chile has a long tradition of respect for and reliance on international law and multilateral approaches to problem-solving. Zaldivar noted that Chile had signed the treaty creating the International Criminal Court and, unlike Argentina and Uruguay, had passed no ‘punto final’, or ‘full stop’, law to protect military or other former abusers from their accusers. Why then would the Centre-Left coalition government, whose constituency included so many of Pinochet’s victims, mount a case of resistance to foreign prosecution of Pinochet? In the first place, the governing coalition itself represents a delicate balance between middle and working class interests, seen now even more than before the era of militocracy as divergent. Moreover, the transition to democracy, even in legal, electoral, and institutional terms, remains far from complete. Civilian leaders remain bound by electoral and representational rules that make it seemingly impossible to amend the Pinochet-era constitution or to modify legislation on labour, trade, finance, taxation, and other matters put in place by the dictatorial regime. Such leaders might be faulted for going along with the pretence of democracy rather than crying foul; but that is easier to do from outside the system than from within it. And even outside the system, initiatives are generally stymied and criticism muted, because much of the economic restructuring imposed on Chile by dictatorial fiat has since been accepted elsewhere by governments desperate for the blessings of the international financial institutions and the largesse of creditors and investors.

The personal discrediting of Pinochet, at least for public purposes, seems now
complete. While aspects of Pinochetismo remain fully entrenched in the system, Pinochet himself has become an embarrassment even to those whose careers he nurtured. From all points on the social pyramid and the spectrum of ideology, Chileans are quick to assert that Pinochet is not an issue. Politicians, bureaucrats, and even military officers rush now to distance themselves from Pinochet. The cognoscenti of public affairs all seemed to be aware in fall of 2001 that military officers who had habitually shown up at Pinochet’s estate to help him celebrate his birthday had failed to do so that season; and according to a former officer, the new commander-in-chief of the armed forces had recently begun to purge Pinochetistas from the command structure.4

Even such subtle and measured change in personnel and attitudes in the military has to be good news to a civilian government that cohabits without controlling. The greater concern of the government, however, is with the attitudes of impresarios and their multinational networks. The election of Socialist Ricardo Lagos in 2000 to the presidency was enough to scare away capital and plunge the country into an economic slump, even though his economic policies have not deviated greatly from those of Christian Democratic predecessors, or, for that matter, from those of the Pinochet years.

Economic growth is now the issue, and if military officers can distance themselves from Pinochet, so can civilian politicians. A media product with virtually no policy profile, Santiago Mayor Jorge Lavin has steadily been gaining in opinion polls since narrowly losing the last presidential election. In fact, he has been carefully groomed over the years by Pinochet, especially in economic matters, but he, too, has succeeded in distancing himself. And surprisingly few middle class Chileans seem prepared to acknowledge a link between economic interests and the forceful suppression of political participation in the 1970s and 1980s.

Social and psychological revindication

Resistance notwithstanding, the European sanctioning of Pinochet and the international spotlight on his misdeeds have finally made it possible for Chileans to deal with them as well. Even after the Supreme Court disposed of the Pinochet case, Judge Guzmán alone had another 250 cases on his docket relating to the crimes of Pinochet’s accomplices. Other judges also began to dust off old cases and launch investigations on new ones. Journalist Pascal Bonnefoy, working with the Chilean Human Rights Commission before the Referendum of 1988, found that clearly political assaults, if they were reported to authorities at all by friends and families of the victims, would usually be reported as apolitical, criminal attacks. Since the indictment of Pinochet, she says, many survivors have come forward for the first time to report that a loved one had been murdered by functionaries of the regime.5

El Mercurio, the country’s dominant daily newspaper for more than half a century, was not inspired to break its silence on the crimes of the dictatorship by any of the dramatic events along the zigzag course of democratic transition. But the arrest and indictment of ‘El Jefe’ had to be explained. Reporters from that and other right-wing newspapers finally began to cover the findings of mass graves and the new reports of old deeds of torture and murder. A Chilean film company produced a new retrospective documentary, ‘Estadio Nacional’, in which survivors
shared vivid recollections of the terror they had experienced during the first month after the Pinochetazo almost 30 years ago, when thousands were detained in the National Stadium. It was shown in November 2001 in Santiago at an international exposition of documentaries together with ‘El Caso Pinochet’, which was also directed by Carmen Luz Parot, and presented the case brought in Europe for extradition. ‘Estado Nacional’ was well received critically, but has not been aired on local TV. Some TV talk shows, however, have dared to examine cases of human rights violations.

Professor Cecilia Medina escaped early into exile and served as JFK Professor at Harvard Law School and as Chair of the UN Human Rights Committee before returning to chair the graduate program at the University of Chile’s Institute of International Relations. As Pinochetistas still comprise about half of the administrators of Chile’s public universities, Professor Medina is not surprised that she cannot make full professor at her home institution. She is pleased, though, that the university’s law school has recently, for the first time, introduced a course in human rights law.

In the working class neighbourhood of La Victoria, where murals honour fallen heroes and the neighbourhood’s own place of honour as the front line in the long and costly struggle against Pinochet, the response to his arrest was not so muted as in the uptown ‘barrio alto’. The celebration went on around the clock for days. Children still hop gleefully around the neighbourhood to a jingle that ends with ‘Jump if you’re not afraid of Pinochet’. And school children are now encouraged, particularly in art classes, to express openly the fears and traumas buried deep inside. But for the grown-ups, jubilation is giving way to quiet desperation as it becomes clear that the policies that leave them sinking deeper again into poverty are not to be revised.

Guillermo Videla, labour and human rights lawyer and Director General of the Labour Ministry in the 1990s under the government of Christian Democrat Eduardo Frei, pointed out that only 12 per cent of the labour force is organized now (down by one half since the mid 90s) and that 10 per cent of the force is formally listed as unemployed. He says that events of the last several decades have left the country, and the working class in particular, in a manic-depressive state. Unions scarcely seem interested in collective bargaining. With credit card debt on the one hand and consumer values on the other, he says, workers settle for bonuses instead of wage raises and benefits.

In fact, Chile has one of the highest levels of clinical depression in the world. It is attributed partly to anxiety and repressed anger, even post-traumatic stress, from Pinochet’s reign of terror; but many believe that the pressures of consumerism and consumer debt have also contributed. Chile also has one of the world’s highest levels of private credit card debt. Cecilia Medina notes that pressures intensify as prices for goods and services (including services like health care that used to be free or subsidized) rise, while wages and salaries do not.

The shaming of Pinochet has served in many ways to relieve the pent-up stress of anger and anxiety and to allow for individual re-empowerment. Elizabeth Lira Kornfeld, clinical psychologist and recipient of service awards for her work with victims of torture and other abuse, says that until that event made denial untenable, many who had dared to resist and had suffered abuse had been
disbelieved by their co-workers, neighbours, or even families, or blamed for their own misfortunes and for bringing misfortune down on others. The socialization of the truth they knew too well may serve to end their marginalization and self-deprecation or to soften the edges of their resentment. At the same time, though, while some find revindication, others find their self-worth called into question, as personal value comes to be measured in material gain that most will never attain.

Prospects for social learning?

Guillermo Videla finds encouragement in the new articulation of respect for human rights and for the environment. But he does not foresee a return to the freewheeling debates and social energy of the 1960s and 1970s. Wage and salary employees are afraid of losing their jobs. Political parties are afraid of losing their elective offices. And the Lagos government is afraid of losing foreign investment. (Even before the Argentine meltdown, the damage that could be done by capital flight was all too apparent.)

The appearance of continuity, or reconnection, with a democratic past is an illusion. Videla says that power does not lie with parties or other traditional political actors, even conservative ones, but rather with newly rich commercial and financial interests given rise by the policies of Pinochet. A single enterprise, El Mercurio, controls 90 percent of the country’s media directly, and El Mercurio and other media are controlled indirectly by the advertisers. They have no qualms about exaggerating the extent of economic crisis in order to weaken the current government. Little wonder, then, that Lavin, who spent $100 million losing the last presidential election, is expected to win the next one.

Most Chileans with whom I spoke on a visit in November 2001 believe that there are contingencies (for example, a major display of social unrest) under which the military would once again intervene. Society as a whole is clearly cautious about pushing the parameters of protest. But some activists are finding imaginative ways of taking matters into their own hands when the media and the courts balk at placing blame where it belongs and identifying the perpetrators of oppression. A recently popular means has been through escraches (outings), wherein noisy demonstrations around the homes of torturers and murderers serve to draw media attention, or at least to enlighten their generally affluent neighbours. As Margaret Mead has noted, great change must begin with the visions of a few committed people. And committed Chileans have never lacked for creativity.

For the time being, it appears that the most serious limitation to social learning in Chile is the fact that the democratic transition has scarcely begun to level the playing field, even in political terms. And in economic terms, the impact of the growing gap in Chile is exacerbated by the implications of the growing global gap. Social learning can become general and effective only when options are apparent and people are prepared to deal with the consequences of what they dare to know.
A new phase for international human rights law and multilateral justice

Reverberations of the detention of Pinochet have by no means been contained in the territory of Chile. The case has in fact opened a new phase in the practice, or implementation, of human rights law and has given great impetus to the realization of the International Criminal Court. Despite the frustration of serious adjudication by politically motivated findings of incapacitation, the denial of sovereign immunity for government officials stands as a powerful precedent for universal jurisdiction.

The need for an international criminal court has been underlined by events around the world in recent years, including the creation of ad hoc courts to try alleged perpetrators of war crimes in Rwanda and the former Yugoslavia. But the detention of Pinochet in London in 1998 set in relief both the possibility of extradition and foreign prosecution of a brutal dictator and the impossibility of completing a transition to democracy while an unrepentant dictator hovers over the process. The entry into force on 1 July 2002 of the Treaty creating the International Criminal Court (ICC) represents a major milestone in multilateral pursuit of the rule of law and respect for human rights. The Court, which begins operations next year in The Hague, is the first international judicial body to come into being since the creation of the International Court of Justice, or World Court, in 1945. Whereas the World Court adjudicates only disputes between states, the ICC is authorized to prosecute individuals for genocide, crimes against humanity, and other war crimes. Negotiated in Rome in 1998 and signed by 139 states, the treaty creating the ICC was validated in April 2002, when the number of states ratifying it exceeded the 60 required.

The treaty had been signed, belatedly, by the Clinton Administration; but instead of ratifying it, as the European Union and other US allies had urged, the Bush Administration, on May 6, with considerable fanfare, announced that it was ‘unsigning’ the document. Such a gesture, according to the chief of the United Nations’ treaty section, was unprecedented. Administration spokespersons have argued that the new court represents a threat to US sovereignty in that politically motivated cases might be brought against US soldiers serving overseas or even against high-ranking government officials. The Pentagon position has been that the court would jeopardize freedom of action for the US military abroad.

In fact, the impunity of past transgressors is protected; the ICC is authorized to deal only with misdeeds occurring after July 1. The new court is thus not likely to help the US achieve its own glasnost by calling to account Kissinger and others whose tracks lie across so much of the seamy side of twentieth-century history, including the destruction of Chilean democracy on 9/11/73. But it might indeed give pause to future power brokers who would blithely toy with the fates of peoples around the world.

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Notes

2. This obligation to acknowledge has assumed concrete form in the converted torture centre now known as El Parque de la Paz in Santiago’s Villa Grimaldi. See Mario I. Aguilar, ‘El Muro de los Nombres de Villa Grimaldi (Chile): Exploraciones sobre la memoria, el silencio y la voz de la historia’, European Review of Latin American and Caribbean Studies, 69, October 2000, pp. 81-8.
5. Bonnefoy interview.
6. Professor Cecilia Medina, Graduate Program Director of the University of Chile’s Institute of International Relations. Formerly JFK Professor at Harvard Law School and Chair of the un Human Rights Committee. Interview, Santiago, 21 November 2001.
7. Discussions with members of the community of La Victoria, including the extended family of Maria Arancibia de Rosas, former president of the Confederation of Mothers’ Centres of La Victoria, La Victoria, 25 November 2001.
9. Medina Interview.
11. Videla Interview.